IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 192 of 2007
In
COMPANY PETITION No. 84 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BLUE BLENDS PETROCHEMICALS LIMITED - Applicant(s)
Versus
... - Respondent(s)

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Appearance :
SINGHI & CO for Applicant(s) : 1,
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/04/2007

ORAL JUDGMENT

Present Judges summons has been taken out by the applicant BLUE BLENDS PETROCHEMICALS LIMITED for an appropriate order of dispensing with the procedure laid

down under section 101(2) of the Companies Act, 1956 as regards the creditors.

2. It is submitted in the affidavit in support of the summons for directions that they may be permitted to rely upon necessary averments in support of their prayer made in Company Petition No.84 of 2007. Company Petition No.84 of 2007 is filed by the applicant company to confirm the reduction of share capital resolved on by special resolution dated 29th September 2006.

3. It is submitted on behalf of the applicant company that the applicant company was incorporated on 27-1-1989 under the provisions of Companies Act, 1956. It is further submitted that under Article 3 and 50 of the Articles of Association of the Company, the company is entitled to sub-divide, consolidate and increase or reduce its share capital. It is further submitted that the Board of Directors of the company in the board meeting held on 29-6-2006 have passed a resolution for reduction in share capital to the extent of Rs,15,34,40,000/-. It is submitted that as per the said resolution, it is proposed to reduce the issued, subscribed and paid up equity share capital of Rs.19,18,00,000/- consisting of Rs.1,91,80,000/- equity shareholders of Rs.10 each, fully paid up, by way of sub division of the face value of existing Rs.1,91,80,000/- issued and paid up equity shares of Rs.10 each aggregating to Rs.19,18,00,000/- into Rs.1,91,80,000/- equity shares of Rs.2/- each aggregating to Rs.3,83,60,000/- and accordingly the face value to the extent of Rs.8/- every issued and paid up equity share shall stand reduced and cancelled by adjusting Rs.15,34,40,000/- against and to the extent of debit balance in the profit and loss account for the year ended

31-3-2006.

In para 6(c), the applicant company has submitted grounds submitting the justification to the proposed capital restructuring. It is submitted that the paid up capital of the company has substantially eroded due to loss as appearing in the profit and loss account of the petitioner for the year ended on 31-3-2006 and the paid up capital is not represented by corresponding assets due to losses. It is submitted that there is no likelihood that any creditors of the company would lose or be prejudiced as a result of the capital restructuring since no sacrifice or waiver is at all called for from them nor are their rights sought to be modified in any manner. Therefore, it is submitted that the proposed reduction is in no way adversely affects the interest of any creditors. It is also further submitted that there is no diminution of liability in respect of unpaid share capital payment or payment to any shareholder of any paid up share capital.

It is further submitted that by a special resolution of the company, duly passed in accordance with section 189 of the Act, at an Annual General Meeting thereof, held after due notice to the equity shareholders on 29th September 2006, the proposed reduction share capital has been unanimously approved and a resolution to that effect has been passed. The special resolution is reproduced at page 7 of the company petition. In para 9, it is specifically submitted on behalf of the company that the proposed reduction does not involve diminution of any liability in respect of unpaid capital or the payment to any shareholders of any paid up share capital and it is further submitted that the rights and interest of the creditors will not be in any way affected, since no sacrifice or waiver is at all called for from them nor their rights sought to be modified in any manner.

Therefore, it is submitted that the directions as required under section 101(2) of the Companies Act, 1956 are not required to be given and therefore, it is requested to dispense with the same.

4. Shri Singhi, learned advocate appearing on behalf of the applicant company has relied upon the order passed by this Court dated 17-3-2006 passed in Company Application No.116 of 2006, in which, in similar type of circumstances, this Court has passed an order of dispensing the procedure as required to be followed under section 101(2) of the Act.

5. Heard Shri Singhi, learned advocate appearing on behalf of the applicant company.

6. As per Section 100 of the Companies Act; subject to the confirmation by this court, a company limited by shares or a company limited by guarantee and having a share capital, may, if so authorized by its articles, by special resolution, reduce its share capital in any way; and in particular and without prejudice to the generality of the powers as mentioned in clauses (a), (b) and (c) and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly. Where the proposed reduction of share capital involves either the diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital and in any other case if the Court so directs, the procedure is required to be followed as regards the creditors as laid down under Section 101(2) of the Act. It is submitted on behalf of the petitioner company that the proposed reduction of share capital does not involve

either the diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital and therefore, clauses (a) and (c) of Section 100 would not be applicable and the case falls within clause (b) of Section 100 and therefore, it is requested to dipense with the procedure laid down under Section 101(2) of the Companies Act, 1956 as regards the creditors. It appears from the record and the averments in the application and the company petition and it is ascertain on the part of the petitioner company that proposed reduction of share capital does not involve either the diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital, that the applicant company is authorized to reduce and consolidate its share capital as per Articles 9 and 10 of the Articles of Association and that special resolution has been passed unanimously by the equity shareholders, the procedure as required under Section 101(2) of the Companies Act, 1956 as regards the creditors is not required to be followed and therefore, the present application is allowed. The procedure laid down under Section 101(2) of the Companies Act as regards the creditors for the proposed reduction of share capital is waived/dispensed with. This application is accordingly disposed of. No costs.

(M.R.SHAH,J.)

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